

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ANTHONY JONES	§	
<i>Plaintiff</i>	§	
	§	
vs.	§	CIVIL ACTION NO: 4:21-cv-2917
	§	
KROGER TEXAS L.P.	§	
<i>Defendant.</i>	§	

DEFENDANT KROGER TEXAS L.P.'S NOTICE OF REMOVAL

Defendant Kroger Texas L.P. (“Defendant” or “Kroger”), incorrectly named as Kroger Texas, L.P., removes Cause No. 2021-48421 from the 165th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441(b).

I. STATE COURT ACTION

1. The above-styled cause was initially brought in the 165th Judicial District Court of Harris County, Texas. The state court action is styled *Anthony Jones v. Kroger, Texas L.P.*, Cause No. 2021-48421. *See Exhibit A*, Plaintiff’s Original Petition (“Original Petition”).

II. PARTIES

2. According to his Original Petition, Plaintiff Anthony Jones (“Plaintiff” or “Jones”) is a citizen of Harris County, Texas. *See Exhibit A*.

3. Defendant Kroger Texas L.P. is a citizen of Ohio, having been incorporated under the laws of the State of Ohio and having its principal place of business in the State of Ohio.

III. JURISDICTION

4. This Court has jurisdiction over the pending action, pursuant to 28 U.S.C. § 1332, on the basis of diversity jurisdiction because the claims in this action are between citizens of

different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. As set forth above, Plaintiff is a citizen of Texas and Kroger is a citizen of Ohio. Therefore, there is complete diversity between the parties in this action.

6. In his Original Petition, Plaintiff alleges that he “was shopping KROGER . . . As Plaintiff was walking through the store, he slipped, landed forcefully on the ground and sustained severe and extensive injuries to his body.”¹ Plaintiff has brought causes of action against Kroger for premises liability, negligence, and gross negligence.² Plaintiff alleges that he “has sustained mental and physical pain and suffering, mental anguish, physical impairment, lost wages in the past, and loss of earning capacity in the future . . .”³ Plaintiff is seeking actual damages for: physical pain, mental anguish, physical impairment, loss of earnings, disfigurement, medical expenses, and punitive damages.⁴

7. In his Original Petition, Plaintiff states that he “seeks monetary relief of over \$200,000.00 but not more than \$1,000,000.00.”⁵ Based on the Original Petition, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

¹ Ex. A at ¶ 8.

² *Id.* at ¶¶ 9-21.

³ *Id.* at ¶ 22.

⁴ *Id.* at ¶¶ 22-27.

⁵ *Id.* at ¶ 31.

IV. TIMELINESS OF REMOVAL

8. Kroger was served on August 9, 2021.⁶ Not more than thirty days have elapsed since Kroger was served with process. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely and proper.

V. CONDITIONS PRECEDENT

9. Kroger has tendered the filing fee of \$400.00 to the Clerk of the United States District Court for the Southern District of Texas, Houston Division, along with the original Notice of Removal. A copy of this Notice of Removal is also being filed in the 165th Judicial District Court of Harris County, Texas, and counsel for Plaintiff is being provided with a copy of this Notice of Removal.

10. By filing this Notice of Removal, Kroger does not waive any defenses, affirmative claims, counterclaims, or third-party claims that may be available, nor does Kroger admit that Plaintiff's claims exceed \$75,000.00, exclusive of interests and costs.

VI. EXHIBITS BEING FILED WITH THIS COURT

11. Accompanying this Notice of Removal are the following exhibits, which are being filed contemporaneously in this Court:

- Exhibit A: Plaintiff's Original Petition
- Exhibit B: Kroger's Original Answer to Plaintiff's Original Petition
- Exhibit C: Notice of Service of Process
- Exhibit D: State Court Docket Sheet
- Exhibit E: Notice of Filing Notice of Removal to the 165th Judicial District Court of Harris County, Texas

⁶ Ex. C.

Because the claims in this action are between citizens of different states and the amount in controversy is in excess of \$75,000.00, exclusive of interest and costs, Kroger removes the above-captioned case from the 165th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

BAKER • WOTRING LLP

/s/ Ernest W. Wotring

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on the following through e-filing on September 7, 2021.

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/s/ Kimberly Dang
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